THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.4657 of 1998

DATED: 06-06-2007

Between:

M.Venkata Muni

… Petitioner.

And

The Chairman & Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Ananthapur

And another.

… Respondents.

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ORDER:

This writ petition is filed by the petitioner who is a conductor in Andhra Pradesh State Road Transport Corporation aggrieved by the imposition of modified penalty of withholding of annual increments for two years with cumulative effect and denial of back-wages by the Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Tribunal') in I.D.No.135 of 1995 dated 8.9.1997.

The facts in brief are that the petitioner was working as Conductor in the 2nd respondent – Corporation was absent from his duties from 2.6.1993 to 23.9.1993 without applying for and obtaining leave. Therefore, he was subjected to disciplinary proceedings in which the following charge was framed:

> " For your irregular attendance resulting in dislocation of service and causing inconvenience to the traveling public besides loss of revenue to the Corporation and thus committed misconduct under Regulation 28 (xxiv) of APSRTC Employees Conduct Regulation 1963."

After holding enquiry the petitioner was removed by the 2nd respondent on 20.5.1994 and the said order of removal was

confirmed by the appellate authority on 12.5.1995. Questioning the said orders the petitioner approached the Tribunal by way of I.D.No.135 of 1995. The Tribunal, modified the punishment as mentioned above.

Heard Sri P.Gangiram Reddy, learned counsel for the petitioner and Sri M.R.Bose, learned counsel appearing for Sri P.Vinayaka Swamy for respondent.

The Tribunal concurred with the finding of the domestic Tribunal that the petitioner was unauthorisedly absent for the period from 2.6.1993 to 23.9.1993 and gave a specific finding in this regard. However, on the issue of quantum of punishment, the Tribunal held as under:

> "Now coming to the question of justification of punishment, as per the report of the Deputy Superintendent (Traffic) dated 5.8.1993 the petitioner was sanctioned 52 days sick leave during 1992 and 29 days sick leave during 1993. It means that the respondent sanctioned the sick leave to the petitioner on due satisfaction that he was really sick. But when the question of consideration of the leave to the petitioner during 1993 came, he refused to accept the Medical Certificates issued by the Deputy Civil Surgeon, Government Hospital, Puttur which is to the effect that the petitioner suffered from jaundice and other ailments during the period from 2.6.1993 to 23.9.1993. It is admitted that the petitioner reported for duty on 24.9.1993. But as per the removal order the respondent seem to have directed the petitioner to appear before Tarnaka Hospital vide order dated 27.1.1994 and that the petitioner appeared accordingly on 2.2.1994 and the EMD, Tarnaka certified as having kept the petitioner under sick list and the petitioner was advised to attend on 12.2.1994 for review vide M.C. dated 3.2.1994 but instead of appearing on 17.2.1994 the petitioner

appeared later and Chief Medical Officer, Tarnaka certified that the petitioner was fit to resume duty with effect from 9.5.1994 but instead of reporting for duty on due date the petitioner did not turn up until 20.3.1994. It may be seen that the allegations about unauthorized absence beyond the period covered by the charge can not be considered being extraneous to the scope of the enquiry. However, the sentence that "the delinquent conductor was directed to Tarnaka Hospital vide this office letter No.E2/26(2)/94-PTR dated 27.1.1994 for treatment" in the removal order indicates that the respondent was satisfied that the petitioner was really sick and hence only he directed the petitioner to Tarnaka Hospital for treatment. That being so, I see no point in discarding the medical certificate filed by the petitioner and refused to accept the contentions of the petitioner. Hence, I am satisfied that the removal order is liable to be set aside. Then coming to the question of alternative punishment, it is a fact that the petitioner filed the medical certificate only at the time of reporting for duty. He has not obtained the prior sanction of sick leave. Though being on leave on medical grounds cannot be held as a misconduct, it can not be said that the failure to obtain prior sanction of leave for the long period as contended by the management did not cause any inconvenience to the management in smooth administration and loss of revenue to the Corporation. It is observed that the petitioner was sick ever since 1992 and the respondent having considered this aspect sympathetically sanctioned the sick leave to the petitioner in 1992. No previous punishments have been proved. Hence, exercising the discretion under Section 11 of the Act, I feel that justice would be met, if I direct the respondent to reinstate the petitioner with continuity of service and attendant benefits but without back-wages and on reinstatement to differ the next filling annual increment for a period of 2 years with cumulative effect. Accordingly, the points are answered.

In the result an award is passed setting aside the

removal order and directing the respondent to reinstate the petitioner with continuity of service and attendant benefits but without back-wages and on reinstatement do differ the next falling annual increment for a period of 2 years with cumulative effect. "

Sri P.Gangirami Reddy submitted that the Tribunal having found that the direction given by the 2nd respondent to the petitioner to appear before the Doctor in Tarnaka Hospital vide letter dated 27.4.1994 indicates that the 2nd respondent was satisfied that the petitioner was really sick, it ought not to have imposed a major penalty of withholding two increments with cumulative effect apart from denying back-wages. He states that though the Tribunal exercised its discretion under Section 11-A of the Industrial Disputes Act 1947, the discretion exercised was not proper and it has resulted in grave hardship to the petitioner.

Sri M.R.Bose however sought to justify the modified penalty imposed on the petitioner by the Tribunal by contending that the petitioner was unauthorisedly absent for as many as 113 days and that therefore no interference is called for.

From a reading of the charge it must be said that the same is very vague. No details are given as to the periods of unauthorized absence nor any statement of imputation was made in support of the charge. However, the fact remains that the petitioner was removed for the unauthorized absence for the period from 2.6.1993 to 23.9.1993. A reading of the order dated 20.5.1994 passed by respondent No.2 (a copy of which has been passed on by the learned counsel for the petitioner during the

course of hearing) shows that the petitioner was a chronic absentee. However, in respect of the same the Tribunal has exercised its discretion by modifying the punishment of removal of the petitioner from service to that of withholding of two increments with cumulative effect apart from denying backwages. As regards the contention of the learned counsel for the petitioner that the Tribunal gave a finding that the 2nd respondent was satisfied that the petitioner was sick, a perusal of the order shows that at page-4 he gave a categorical finding that the charge that petitioner was unauthorisedly absent was proved. The Tribunal has picked up a stray sentence from the order of the 2nd respondent and inferred that the 2nd respondent was satisfied that the petitioner was sick during the relevant period. A reading of the order of the 2nd respondent as a whole does not justify such a conclusion. In any event, the Tribunal has exercised its discretion in modifying the punishment despite the fact that the charge was held proved against the petitioner.

I am therefore of the view that the discretion exercised by the Tribunal does not suffer from any legal infirmity so as to further modify the sentence of punishment imposed on the petitioner, by this Court.

For the aforementioned reasons the writ petition fails and is accordingly dismissed.

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C.V.NAGARJUNA REDDY,J

Date:06.06.2007
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